IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10451 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA SINGH @ RAJU (DABODI)KIRPALSINGH ATHWAL

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA SR. COUNSEL with MR SAURABH J MEHTA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. The petitioner Rajendrasing @ Raju (Dabodi) Kirpalsing Athwal, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in

exercise of powers under Section 3(1) of the PASA Act, dated December 2, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 2 offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on December 1, 1999 and December 2, 1999, which were verified by the detaining authority on December 2, 1999 and the order of detention is passed on December 2, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed this petition. He, however, does not dispute the factual aspect of the verification of the statements having been made on December 2, 1999 and the order having been passed on the same day i.e. on December 2, 1999.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these

witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

#. So far as the registered offences are concerned, the document in the form of statement of Rajendrasing @ Raju Dabodi Kirpalsing Athwal supplied to the detenue along with the grounds of detention is found to be illegible both by this Court as also by learned AGP and, therefore, CR No. 22/99 cannot be considered inasmuch as it affects the right of making an effective representation.

#. So far as CR No. 5213/99 is concerned, there certain documents including statement of one witness Mehmood and chargesheet counter are found to be illegible both by this Court as also by the learned AGP and, therefore, CR No. 5213/99 cannot be considered as it affects the right of making an effective representation.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated December 2, 1999 is hereby quashed and set aside. The detenue Rajendrasing @ Raju (Dabodi) Kirpalsing Athwal, is ordered to be set at liberty forthwith, if not required

in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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